

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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WELLS FARGO BANK N.A.,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC,

Defendant.

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2:13-cv-01231-RCJ-GWF

**ORDER**

This case arises out of a homeowners' association ("HOA") foreclosure sale. Pending before the Court is a motion to certify a question of law to the Nevada Supreme Court.

**I. FACTS AND PROCEDURAL HISTORY**

On or about February 9, 2005, Anthony V. Roybal gave Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") a \$270,000 promissory note ("the Note") in exchange for proceeds in that amount to purchase real property at 2280 Laramine River Dr., Henderson, NV 89502 ("the Property"), as well as a first deed of trust ("the DOT") against the Property. (*See* Am. Compl. ¶¶ 4, 8–9, ECF No. 79). Wells Fargo became the assignee of the Note and DOT on or before May 24, 2010, when the assignment was recorded. (*See id.* ¶ 10). When Roybal became delinquent on his HOA dues, Nevada Association Services, Inc., as agent for Sunrise Ridge Manor HOA ("the HOA"), recorded an HOA lien against the Property and conducted a

1 foreclosure sale at which Defendant SFR Investments Pool 1, LLC (“SFR”) purchased the  
2 Property for \$18,000. (*Id.* ¶¶ 11–14).

3 Wells Fargo sued SFR in this Court for declaratory relief that the HOA foreclosure did  
4 not extinguish the first mortgage, and to quiet title to that effect. Defendant filed counterclaims  
5 and third-party claims against Wells Fargo, Roybal, and Bank of America, N.A. (“BOA”) for  
6 declaratory relief that the HOA foreclosure extinguished Plaintiff’s first mortgage, BOA’s  
7 second mortgage, and any interest of Roybal in the Property, to quiet title to that effect, and for  
8 unjust enrichment. Wells Fargo and SFR filed cross motions for summary judgment. The Court  
9 granted Wells Fargo’s motion and denied SFR’s. SFR and BOA later filed a stipulation that  
10 BOA’s second deed of trust was extinguished by the HOA foreclosure sale and that BOA  
11 claimed no interest in the Property. SFR asked the Clerk to enter default against Roybal as to its  
12 third-party claims, but the Court denied the motion because there was no evidence of service  
13 upon Roybal. The Clerk entered default after SFR submitted proof of service. The Court  
14 granted a stipulation to vacate its previous summary judgment order when the Nevada Supreme  
15 Court decided *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), ruling  
16 that HOA foreclosures extinguished first deeds of trust under Nevada Revised Statutes section  
17 (“NRS”) 116.3116.

18 In the meantime, Wells Fargo had conducted a non-judicial foreclosure sale of the  
19 Property under Chapter 107 at which it purchased the Property itself. (*See* Am. Compl. ¶¶ 18–  
20 21). Wells Fargo filed the Amended Complaint (“AC”) for declaratory relief, quiet title, and  
21 unjust enrichment. SFR filed the Counterclaim for quiet title, declaratory relief, wrongful  
22 foreclosure, unjust enrichment, injunctive relief, and intentional interference with contractual  
23 relations.

1 Wells Fargo filed two summary judgment motions, and SFR filed one. The Court  
2 granted Wells Fargo's motions and denied SFR's, ruling that the notice procedure under Chapter  
3 116 was facially unconstitutional under the Due Process Clause of the Fourteenth Amendment,  
4 *see Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1160 (9th Cir. 2016),  
5 that the common law wrongful foreclosure counterclaim therefore necessarily also failed, that  
6 any action under Chapter 107 was untimely, and that the counterclaims for unjust enrichment  
7 and intentional interference with contractual relations would fail even if SFR had not withdrawn  
8 them. The Court solicited a proposed judgment from Wells Fargo. Wells Fargo complied, and  
9 the Court has entered judgment. After Wells Fargo submitted the proposed judgment, but before  
10 the Court entered it, SFR asked the Court to certify a question of law to the Nevada Supreme  
11 Court.

## 12 **II. CERTIFICATION STANDARDS**

13 The Court may certify a question to the Nevada Supreme Court if the answer to the  
14 question will be "determinative of the cause." *See Nev. R. App. Proc. 5(a); Volvo Cars of N.*  
15 *Am., Inc. v. Ricci*, 137 P.3d 1161, 1164 (Nev. 2006) (adopting the Arkansas–California–New  
16 Mexico interpretation of "determinative of the cause" as meaning that the answer will be  
17 determinative of at least part of the federal case).

## 18 **III. ANALYSIS**

19 SFR asks the Court to certify the following question to the Nevada Supreme Court:  
20 "Does NRS 116.31168(1)'s incorporation of NRS 107.090 require homeowners' associations to  
21 provide notices of sale to banks even when a bank does not request notice?" The Court will not  
22 certify the question. As the Court has ruled in a previous case after careful analysis of the  
23 language of the statute, the statute's legislative history, and the Nevada Supreme Court's own  
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1 language interpreting the statute's operation, the answer is "no." *See U.S. Bank, N.A. v. SFR Invs.*  
2 *Pool 1, LLC*, 124 F. Supp. 3d 1063, 1079–80 (D. Nev. 2015) (citing *SFR Invs. Pool 1, LLC v.*  
3 *U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014)). The Court of Appeals has since ruled in  
4 accord. *See Bourne Valley Court Tr.*, 832 F.3d at 1159 (reasoning that NRS 116.31168's  
5 incorporation of NRS 107.090(3)–(4) would render NRS 116.31163 and 116.311635  
6 superfluous). Absent intervening, contrary, binding authority, i.e., from the U.S. or Nevada  
7 Supreme Courts, this Court is bound by the Court of Appeals' rulings as to Nevada law. *See*  
8 *Mohamed v. Uber Techs., Inc.*, 836 F.3d 1102, 1111 (9th Cir. 2016).

9 Even assuming that the Nevada Supreme Court were to rule that the statutes as they  
10 existed at the relevant time required notice of sale to first deed of trust holders, SFR would still  
11 have to show compliance. SFR does not even appear to claim any party's attempt to mail the  
12 notice of sale to Wells Fargo, and any conclusive presumption of notice under state law would  
13 itself be facially infirm under the Due Process Clause. Reasonable notice under the Due Process  
14 Clause is a factual inquiry "under all the circumstances" that cannot be obviated by legal  
15 presumptions under state (or federal) law. *See Jones v. Flowers*, 547 U.S. 220, 226–27 (2006)  
16 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *Mennonite Bd. of*  
17 *Missions v. Adams*, 462 U.S. 791, 799 (1983); *see also United States v. Simmons*, 476 F.3d 33,  
18 36–37 (9th Cir. 1973) (holding that regulations establishing irrebuttable or conclusive  
19 presumptions of receipt of mailed notices violate due process). A statute that explicitly  
20 disregarded the actual factual circumstances of notice in favor of a conclusive presumption  
21 would be facially infirm under the Due Process Clause, at least where the thing to be noticed is  
22 an impending loss of property rights.

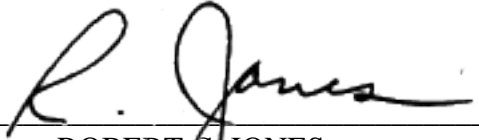
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**CONCLUSION**

IT IS HEREBY ORDERED that the Motion to Certify (ECF No. 1118) is DENIED.

IT IS SO ORDERED.

Dated January 4, 2017.



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ROBERT C. JONES  
United States District Judge